

No. 5758 Equity.

the twenty-fifth day of November, in the year Eighteen Hundred and Ninety one, Execute a Deed of Trust to your orator whereby it conveyed all its estate and property of every nature, kind or description, real or personal, excepting from said grant the estates of all the then owners of burial lots which had been sold or conveyed for burial purposes by certificates (under the seal of the said Corporation) of their ownership of the same and your orator files herewith as part hereof a duly Certified Copy of said Deed of Trust marked Exhibit No. 1.

9. That your Honorable Court in No. 5891 Equity sustained by injunction your orator from selling said real Estate because the Justice, your Orator, if he should make a sale thereof could not convey a good and clear title to the purchaser thereof the legal title not being in said Body Corporate.

10. That the said Ulrich H. Cough recently to wit on the sixteenth day of February, 1892 obtained a judgment in your Honorable Court as a Court of Law against the said Body Corporate for his proportionate part price and said judgment in favor of said Lewis M. Mottu and your Orator files herewith as part hereof a duly Certified Copy of said Judgment marked Exhibit 2.

11. That but a small portion of said eight acres of land in fact less than one fourth of an acre thereof has been devoted to burial purposes, lots therein having been sold and certificates therefore issued by said Body Corporate under its Corporate seal under a bona fide belief that it was the legal owner of said land and with the sanction and consent of the said Directors who are mentioned in said Deed from Rev. A. R. Mearns and wife and that said lots are located together in one portion of said land.

12. That although the legal title to said land is in the eight living Directors as Trustees, one of them, Samuel Mottu, being dead, and although the Charter of said Body Corporate provides that "All vacancies occurring among the Directors shall be immediately replaced from among the Stockholders or otherwise as before provided by the vote of the remaining Directors" as will appear from Exhibit C, yet the vacancy occasioned by the said Samuel Mottu's death has never been filled and still exists there being no stockholders as no stock has ever been issued - yet that the said land is in fact the property of said Body Corporate.

13. That the said Body Corporate is utterly insolvent and unable to pay its debts and has no property except said real Estate.

14. That your Orator is unable to realize upon his said Judgment by Execution thereon or by any process of a Court of Law and that he has no adequate remedy except by the intervention of a Court of Equity.

15. That all of said Directors or Trustees believed that and acted as if the legal title to said land was in said Body Corporate and it was the full intention of all the parties to said Deed from A. R. Mearns and wife that the legal title thereto should be in said Body Corporate and not in said Directors as Trustees.

16. That unsuccessful efforts have been made to have the title to said land conveyed by said Directors as Trustees